

POLITICS & GOVERNMENT MARCH 9, 2016 4:05 PM

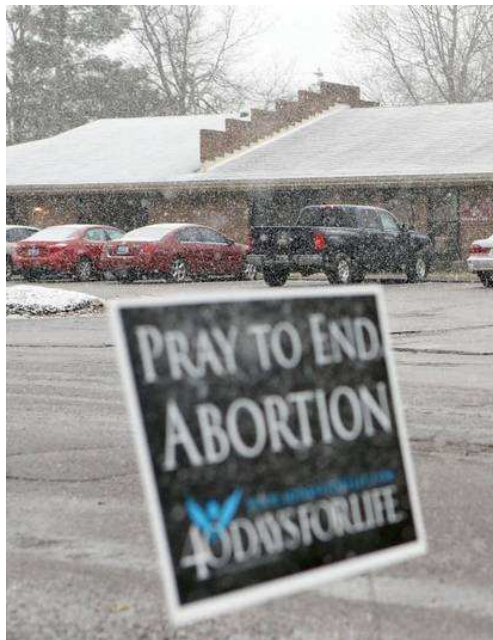
Lexington clinic stops performing abortions until court hearing next week

HIGHLIGHTS

Bevin administration claims in lawsuit that EMW Women's Clinic is operating without a license

Clinic says it's acting properly but will not perform abortions until March 15 court hearing

Bevin now has suits against two abortion clinics



Sign across the street from the EMW Women's Clinic, 161 Burt Road in Lexington, Ky., Thursday, March 3, 2016. **Charles Bertram** - cbertram@herald-leader.com

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The EMW Women's Clinic in Lexington has put off performing abortions until a judge rules next week on a request from Gov. Matt Bevin's

administration to stop the procedures.

“We’re taking a timeout,” Lexington attorney Scott White, who is representing the clinic, said Wednesday.

The Bevin administration’s Cabinet for Health and Family Services claimed in a lawsuit filed last week in Fayette Circuit Court that the clinic at 161 Burt Road, off Nicholasville Road, is operating without a license.

The cabinet sent a letter March 4 to Dr. Ernest Marshall, who runs the clinic, asking it to “cease and desist” from performing abortions, or it would ask the court to temporarily halt abortions until the court could hold a full hearing on the lawsuit.

White said a hearing is scheduled for 9 a.m. Tuesday before Fayette Circuit Judge Ernesto Scorsone on the state’s request for a temporary injunction.

If the judge sides with the state, “we will assess our options,” White said. “If the judge allows the clinic to continue its work, it will resume performing abortions on its regular office days on Thursdays and Fridays.

“All this required the clinic to do is reschedule patients being seen this Thursday and Friday to next Thursday and Friday.”

In effect, White said, the clinic “has agreed to take a timeout” of two business days for the question to be resolved that minimizes risks to both the clinic and the commonwealth.”

He stressed that the clinic has “not conceded that the medical services provided at the clinic in Lexington are improper in any way.”

He added, “Every day my client’s clinic is closed, women in this area are denied their constitutional right to have an abortion.”

Representatives of the state and clinic initially were to appear Friday morning in Fayette

Circuit Court for a hearing on the state's request for injunctive relief, but that got postponed to Tuesday.

Bevin's general counsel, Steve Pitt acknowledged that the state "has been advised by EMW's attorney that EMW will not perform any abortion procedures at the Lexington facility until the case is decided by the circuit court."

He also noted that the state's pending motion for a temporary injunction is scheduled for 9 a.m. Tuesday but said it might be moved depending on the court's schedule.

In the state's March 4 "cease and desist" letter to clinic owner Marshall, Stephanie Hold, acting inspector general for the Cabinet for Health and Family Services, asked Marshall to confirm by noon March 7 that the clinic has stopped performing abortions.

The state noted that any person who operates an abortion clinic without a license may be fined up to \$10,000 a day.

White said Wednesday that the clinic had not formally responded to the state's letter.

The state's lawsuit said a Feb. 18 inspection of the clinic — its first since 2006 — found that the clinic exists solely to perform abortions, disqualifying it for the licensure exemption provided to private physicians' offices.

In his initial response to the lawsuit, White said the clinic was operating legally, as it has since 1989. EMW also has an abortion clinic in Louisville. EMW operates the only active abortion clinics in Kentucky.

The lawsuit marked the second time Bevin, who took office in December, has gone after what his administration said was an unlicensed abortion clinic in Kentucky. Bevin, a Republican, ran for governor as a strong opponent of abortion.

Three weeks ago, the state filed a lawsuit against Planned Parenthood, saying the organization performed abortions without a license at its new clinic in Louisville. Planned Parenthood said it had complied with instructions it received from the administration of Gov. Steve Beshear, whom Bevin replaced in early December, and offered abortions as part of the state's standard licensing procedure.

The state is seeking nearly \$700,000 in fines from Planned Parenthood, which stopped performing abortions until the matter is resolved.

Bevin's lawsuit against EMW Women's Clinic said the Lexington clinic doesn't have a required agreement with an ambulance service, ensuring that a patient may be transferred to a hospital if an emergency occurs during an abortion.

Kentucky law requires abortion clinics to have transfer agreements with both a hospital and an ambulance service.

The suit also said the Lexington clinic maintained expired medicine and wasn't clean.

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